
2002 Wis Eth Bd 05
LOCAL CODE

The Ethics Board advises:

The effect of building a public facility on the value of an official's adjacent property is a factual one. The factual assessment is important but is not one we can make. In the absence of anything other than conjecture about that effect, public policy favors a public official's exercise of official duties. But the official, at his or her discretion, may abstain from participation if the official believes participation is likely to undermine citizen confidence in the county's government. Therefore:

- (1) If building the public facility on adjacent property will, or is reasonably likely to have a financial effect on the official's land, the official SHOULD ABSTAIN from participation in the decision.
- (2) In the absence of any financial effect, the official SHOULD PARTICIPATE; and
- (3) If the effect is conjectural or attenuated, the official SHOULD PARTICIPATE UNLESS, in the official's judgment, to do so would undermine public confidence in the decision or in government.

Facts

¶1 This opinion is based upon these understandings:

- a. You are the corporation counsel for a county.
- b. A local public official owns and resides on a parcel of land adjacent to a county-owned land parcel.
- c. The county is considering building a new public facility on its parcel.

Question

¶2 The Ethics Board understands your question to be:

Does §19.59, *Wisconsin Statutes*, restrict the local official's involvement in the county's decision whether to erect a new public facility on the land adjacent to the official's parcel?

Discussion

¶3 Section 19.59, *Wisconsin Statutes*, provides that no local public official may use his or her office or position to obtain anything of substantial value for the private benefit of the official or participate in a matter in which the official has a substantial financial interest.¹ The individual is a local public official.² The pertinent questions are:

1. Would the official's participation in the county's decision be likely to result in a personal benefit for the official?
2. Does the official have a personal substantial financial interest in the county's decision to build on the adjacent parcel of land?

¶4 We agree with your conclusion that if the development will result in a substantial financial benefit or avoidance of a substantial financial detriment, then the official is precluded from taking official action. Conversely, if it will not, the official is not precluded from taking official action.

¶5 As you recognize in your letter to us, the primary issue is a factual one: What, if any, impact will the county's development on its parcel of land have on the value of the official's property? You have concluded that:

- (1) Even if the county were to build a public facility on the parcel adjacent to the official, no new public utilities would extend to or over his property, and whether there would be any new roads over or to the property is purely speculative;
- (2) The effect of any extension of utilities or roads is likely to be neutral because the official would have to pay to access public sewer and water

¹ Section 19.59(1)(a) and (c), *Wisconsin Statutes*, provides:

19.59 Codes of ethics for local government officials, employees and candidates. (1)(a) No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated.

* * *

(c) Except as otherwise provided in par. (d), no local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.
2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

² See 1997 Wis Eth Bd 6, ¶6; 1999 Wis Eth Bd 01, ¶4.

services and a public road already provides access to the official's property: and

- (3) The existence of a public facility could potentially increase or decrease the value of adjacent and nearby property, but that the specific effect cannot be quantified.

¶6 You have said that there is a heightened concern for appearances regarding this issue. You generally advise supervisors that they should conform not only to the letter, but the spirit of the law and that even the appearance of impropriety should be avoided. That is a sound approach and we do not take issue with it. However, the Ethics Board has said in the past that public policy supports a public official's exercise of official duties when the financial effect of an official decision on the official's personal interests is uncertain and conjectural. In 1998, the question was whether a member of a city council could properly vote on whether to extend public utilities to an area in which the member owned a house. The Board said:

It is not clear that extension of service to the affected area or retention of the status quo will result in a private benefit of substantial value. You have indicated that the municipality is likely to require a substantial payment from the owner of each property to which water and sewer service is extended. On the other hand, these households may avoid the cost of maintaining wells and septic systems. Property values may be affected. The private benefits and costs are several and, in part, offsetting. In contrast, the public benefits from the provision of public water and sewer service may include added groundwater protection and improved public health. *If a public official's participation or action on government policy is neither forbidden nor antagonistic to public policy, then public policy favors a public official's exercise of his or her official duties.*³

³ See, e.g., 1995 Wis Eth Bd 3, ¶12; 8 Op. Eth. Bd. 33 (1985). We also note the expression of the legislature's intent set out in §19.45(1), *Wisconsin Statutes*. Although that portion of the Ethics Code is addressed to state officials, we believe it has relevance to local officials as well. In that section, the legislature has stated:

19.45 (1) The legislature hereby reaffirms that a state public official holds his or her position as a public trust, and any effort to realize substantial personal gain through official conduct is a violation of that trust. This subchapter does not prevent any state public official from accepting other employment or following any pursuit which in no way interferes with the full and faithful discharge of his or her duties to this state. The legislature further recognizes that in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government; that citizens who serve as state public officials retain their rights as citizens to interests of a personal or economic nature; that standards of ethical conduct for state public officials need to distinguish between those minor and inconsequential conflicts that are

98 Wis Eth Bd 01, ¶10 (emphasis added).

Advice

¶7 The Ethics Board advises:

The effect of building a public facility on the value of the official's adjacent property is a factual one. The factual assessment is important but is not one we can make. In the absence of anything other than conjecture about that effect, public policy favors a public official's exercise of official duties. But the official, at his or her discretion, may abstain from participation if the official believes participation is likely to undermine citizen confidence in the county's government. Therefore:

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unavoidable in a free society, and those conflicts which are substantial and material; and that state public officials may need to engage in employment, professional or business activities, other than official duties, in order to support themselves or their families and to maintain a continuity of professional or business activity, or may need to maintain investments, which activities or investments do not conflict with the specific provisions of this subchapter.